

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:17-CR-136-1H

UNITED STATES OF AMERICA,

v.

JAVION SCOTT,

Defendant.

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ORDER

This matter is before the court on defendant's motion to suppress [DE #20], to which the government responded and defendant replied. Following an evidentiary hearing on September 28, 2017, and submission of supplemental memoranda by both parties, United States Magistrate Judge Kimberly A. Swank entered a memorandum and recommendation (M&R) on December 20, 2017 recommending denial of the motion. The defendant filed objections, and this matter is ripe for adjudication. Under Rule 59(b) of the Federal Rules of Criminal Procedure, a district judge must consider de novo any portion of the M&R to which objection is properly made.

Defendant objects to the M&R, noting the following specific objections:

(A) The M&R omits and minimizes material facts.

First, defendant objects that the M&R omits the fact Scott's apartment was searched pursuant to Operation Spring Sweep, a large-

scale law enforcement operation initiated and led by the United States Marshal's Service. This objection is without merit. The M&R states "Operation Spring Sweep was a multi-agency operation organized by the United States Marshal Service, ATF, NCDPS, and local law enforcement which took place March 28-29, 2017." This statement, along with other information in the M&R, appropriately gives the facts and circumstances of the organization of the search. Next, defendant objects that the M&R omits the fact that the specific conditions of Scott's post-release supervision provided that only his supervising officer could conduct a warrantless search for purposes reasonably related to his supervision. This objection is also without merit. The M&R thoroughly analyzes this issue and correctly concludes that the supervision language does not override the statutory authority granted by the General Assembly of North Carolina

(B) The defendant makes the following legal objections: (1) the M&R erroneously concludes that the warrantless search is lawful; (2) the M&R erroneously construes N.C. Gen. Stat. § 15A-1368.4(b1) (8); (3) the M&R erroneously concludes that the warrantless search of Scott's cell phone was lawful.

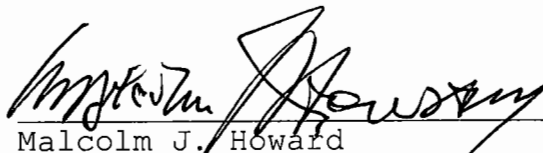
These last three objections are also without merit. This court notes the difficult issues each of these warrantless search cases raise. The court has carefully reviewed the facts and

circumstances of this particular search as well as completed a thorough analysis of the existing case law. After careful consideration, the court finds the magistrate judge has made proper and correct legal conclusions.

This court, having conducted a de novo review of the M&R and other documents of record, finds the recommendation of the magistrate judge is in accordance with the law and should be approved.

Accordingly, the court hereby adopts the recommendation of the magistrate judge as its own; and, for the reasons stated therein, the defendant's motion to suppress [DE #20] is hereby DENIED.

This 13th day of February 2018.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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